

STATE OF SOUTH CAROLINA

(Caption of Case)

**App. of time Warner Cable Information Services to
Amend its Certificate of Public Convenience and
Necessity to Provide Telephone Services in the
Service Area of PBT Telecom, Inc., and for
Alternative Regulation**

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

COVER SHEET

DOCKET

NUMBER: 2008 - 328 - C

(Please type or print)

Submitted by: Margaret M. Fox

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DOCKETING INFORMATION (Check all that apply)

☐ **Emergency Relief demanded in petition** ☐ **Request for item to be placed on Commission's Agenda expeditiously**

☐ **Other:**

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
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<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input checked="" type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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December 22, 2008

Mr. Charles L. A. Terreni
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

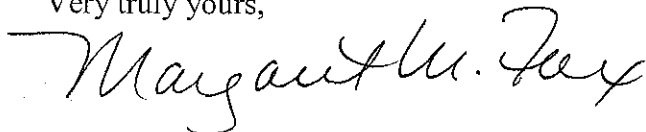
**Re: Application of Time Warner Cable Information
Services to Amend its Certificate
Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C,
2008-328-C, and 2008-329-C**

Dear Mr. Terreni:

Enclosed for filing please find the Surrebuttal Testimony of Douglas Duncan Meredith and the Surrebuttal Testimony of H. Keith Oliver in the above-referenced dockets. By copy of this letter and certificate of service, copies of both Surrebuttal Testimonies are being served on all parties of record.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm
Enclosure

cc: Parties of Record

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C,
2008-328-C, and 2008-329-C

IN RE: Application of Time Warner Cable Information)
 Services (South Carolina), LLC, d/b/a Time)
 Warner Cable to Amend its Certificate of Public)
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 Telephone Services in the Service Area of)
 Farmers Telephone Cooperative, Inc. and for)
 Alternative Regulation)
 (Docket No. 2008-325-C))
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 Home Telephone Company, Inc., and for)
 Alternative Regulation)
 (Docket No. 2008-327-C))
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 Rock Hill Telephone Company, d/b/a Comporium)
 Communications, and for Alternative Regulation)
 (Docket No. 2008-329-C))
_____)

**SURREBUTTAL TESTIMONY
OF
DOUGLAS DUNCAN MEREDITH**

**ON BEHALF OF FARMERS TELEPHONE COOPERATIVE, INC.; FORT MILL
TELEPHONE COMPANY, D/B/A COMPORIUM COMMUNICATIONS; HOME
TELEPHONE COMPANY, INC.; PBT TELECOM, INC.; AND ROCK HILL
TELEPHONE COMPANY, D/B/A COMPORIUM COMMUNICATIONS**

1 **Q: PLEASE STATE YOUR FULL NAME.**

2 A: My full name is Douglas Duncan Meredith.

3 **Q: ARE YOU THE SAME MR. MEREDITH THAT PROVIDED DIRECT PRE-**
4 **FILED TESTIMONY IN THE ABOVE CAPTIONED PROCEEDINGS?**

5 A: Yes.

6 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING?**

7 A: I am testifying in this consolidated docket on behalf of Farmers Telephone
8 Cooperative, Inc.; Fort Mill Telephone Company, d/b/a Comporium
9 Communications; Home Telephone Company, Inc.; PBT Telecom, Inc.; and Rock
10 Hill Telephone Company, d/b/a Comporium Communications ("RLECS").

11 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A: My purpose in providing this testimony to the Public Service Commission of South
13 Carolina ("Commission" or "PSC") is to respond to statements made by Julie P.
14 Laine in her Rebuttal Testimony.¹

15 **Q: PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A: In my testimony, I will address and respond to the following:

17 (1) In response to Ms. Laine's puzzlement regarding the RLECs' position
18 in TWCIS' certification proceedings in 2004 and here in this proceeding,² I will

¹ See generally *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Rebuttal Testimony of Julie P. Laine on Behalf of Time Warner Cable Information Services (South Carolina), LLC (Dec. 8, 2008) ("Laine's Rebuttal"). [Note: For ease of reference, the references contained herein are to the *Farmers* docket, but the same comments are applicable to all dockets. Laine's Rebuttal, for example, is not specific to Farmers but is applicable to all companies.

² Laine's Rebuttal, p. 2.

1 clarify that the RLECS' position between 2004 and the current proceeding has not
2 changed.

3 (2) I respond to Ms. Laine's statements that TWCIS seeks certification to
4 provide services under the same state rules applied to CLECs in South Carolina.
5 Ms. Laine either misrepresents or misunderstands the RLECS' position that TWCIS
6 should not be allowed to *voluntarily* abide by federal regulations and the rules of
7 this Commission. There are sound public policy reasons why TWCIS should not be
8 allowed to treat federal regulations and state rules as voluntary obligations;

9 (3) I respond to Ms. Laine's discussion about its relationship with Sprint
10 and about wanting the flexibility to change its business plans. I address why this
11 goes to the heart of the RLECS' concerns about TWCIS' apparent bait-and-switch
12 tactics in this proceeding. It appears TWCIS tries to justify use of this tactic so long
13 as the tactic is not hidden, but is revealed by TWCIS as potentially part of its future
14 business plans; and

15 (4) I also respond to Ms. Laine's discussion of TWCIS' desire to have
16 flexibility to change its service offerings under an expansion to its certification. I
17 will respond by addressing TWCIS' own statements that it would not offer any other
18 services under an expanded certification.

19
20 In summary, it is evident that TWCIS seeks certification as a telephone utility in
21 South Carolina but does not want the Commission to rely on TWCIS' own
22 declarations and statements in granting its application. In short, TWCIS apparently
23 seeks a blank check from the Commission. My recommendation to the Commission
24 is to adopt my and Mr. Oliver's initial recommendations in the granting of a
25 certificate requiring reasonable and equitable conditions, or in the alternative, deny
26 TWCIS' application for an expanded certificate.

I. THE RLECS' POSITION HAS NOT CHANGED BETWEEN TWCIS' 2004 CERTIFICATION PROCEEDING ITS CURRENT CERTIFICATION EXPANSION PROCEEDING.

Q: HAS THE RLECS' POSITION REGARDING CERTIFICATION OF TWCIS' DIGITAL PHONE SERVICE CHANGED FROM ITS POSITION IN THE 2004 PROCEEDINGS?

A: No, it has not. In 2004, the RLECs stated that TWCIS' service was not a "Vonage-like" service and, therefore, the Commission was not preempted from imposing certification requirements on TWCIS. The RLECs argued that the Commission should exercise its certification authority and proceed to a determination of whether or not it was in the public interest to grant a certificate to TWCIS for its end user interconnected VoIP service. In the instant proceeding, we also state that the Commission should exercise its certification authority, and should grant TWCIS a certificate for its interconnected VoIP service, but should impose conditions to ensure a fair and level playing field. Again, TWCIS' end user service is not Vonage-like, and state certification is not preempted.

Q: WHY, THEN, DO YOU STATE IN YOUR DIRECT TESTIMONY, "IT APPEARS THAT TWCIS MAY OFFER ITS DIGITAL PHONE VOIP SERVICE WITHOUT A CPCN FROM THE COMMISSION IN EXACTLY THE SAME MANNER IT IS REPRESENTING IT WILL OFFER THIS SERVICE IN THE FUTURE; NAMELY, TO USE SPRINT AS ITS INTERMEDIARY CARRIER TO INTERFACE WITH THE PUBLIC SWITCHED TELEPHONE NETWORK."

A: That statement was a response to TWCIS' position that it is *voluntarily* seeking state certification and limited regulation of its interconnected VoIP service. If, as TWCIS claims, it is not necessary to obtain state certification (a claim with which we clearly disagree), then why is TWCIS here before the Commission in these proceedings? If certification is not required (as TWCIS claims), and TWCIS will continue to use

1 Sprint (as it initially claimed, but later retracted in Laine's Rebuttal testimony), then
2 why isn't TWCIS simply providing its "unregulated," "non-telecommunications,"
3 "Vonage-like" service through Sprint? Clearly TWCIS at least has some doubt
4 about its ability to offer Digital Phone service without certification from this
5 Commission.

6 **Q: DID THE FCC'S TIME WARNER DECLARATORY RULING ORDER HOLD**
7 **THAT INTERCONNECTED VOIP PROVIDERS DO NOT NEED A STATE**
8 **CERTIFICATE TO PROVIDE SERVICE TO END USERS?**

9 A: No. The FCC ruled that wholesale telecommunications carriers (such as Sprint, in
10 this instance) are entitled to interconnect and exchange traffic with ILECs when
11 providing services to other service providers, including VoIP service providers (such
12 as TWCIS, in this instance). The FCC did not express an opinion on whether the
13 VoIP service provider would need a state certificate to provide the end user service.
14 In fact, the FCC expressly stated: "We also make clear that we do not address any
15 entitlement of a retail service provider to serve end users through such a wholesale
16 arrangement, nor, contrary to the views of some of the commenters, do we read the
17 Petition to seek such rights."³

18 **II. TWCIS SHOULD NOT BE ALLOWED TO VOLUNTARILY SUBMIT TO**
19 **REGULATION UNDER AN EXPANDED CERTIFICATION**

20 **Q: WHEN MS. LAINE STATES THAT TWCIS IS SEEKING CERTIFICATION TO**
21 **PROVIDE ITS VOIP SERVICES "UNDER THE SAME SET OF REGULATIONS**
22 **APPLICATION [SIC] TO OTHER CLECs IN SOUTH CAROLINA,"⁴ WHAT IS**
23 **YOUR REACTION?**

³ See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket N. 06-55 (March 1, 2007) ("Time Warner Declaratory Ruling"), paragraph 15.

⁴ Laine's Rebuttal, p. 4. (Emphasis supplied)

1 A: This statement does not convey correctly the situation in South Carolina. Other
2 CLECs in South Carolina have mandatory obligations in accordance with state
3 regulation of their services. Other CLECs have no choice but to comply with state
4 rules or face penalties. TWCIS, on the other hand, has stated that it "voluntarily
5 submits to the regulatory jurisdiction of the PSC."⁵ In order to be treated like other
6 CLECs under the same set of rules applicable to such CLECs in the state of South
7 Carolina, TWCIS must face mandatory, not voluntary, obligations pursuant to the
8 expansion of its certification.

9
10 TWCIS is attempting to amend its certificate by making statements and then
11 attempting to reverse or confuse commitments. This is why it is vital for the
12 Commission to apply explicit conditions to TWCIS' certification if the Commission
13 grants TWCIS' Application. Both Mr. Oliver and I have identified these obligations
14 in our Direct Testimonies.

15 **III. TWCIS APPARENTLY DOES NOT INTEND TO KEEP**
16 **COMMITMENTS IT HAS MADE IN THIS PROCEEDING.**

17 Q: MS. LAINE STATES THAT TWCIS SHOULD NOT "BE SUBJECT TO ANY OF
18 THE CONDITIONS SUGGESTED BY MSSRS. MEREDITH AND OLIVER."⁶
19 WHAT IS YOUR REACTION?

20 A: In direct testimony, I recommended, among other things, that the Commission hold
21 TWCIS to its own stated commitments in this proceeding.⁷ Those commitments

⁵ *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Time Warner Cable Information Services (South Carolina), LLC's Answers to Farmers Telephone Cooperative, Inc.'s First Set of Interrogatories ("TWCIS Answers to Interrogatories - 1st Set"), Interrogatory 1-17(viii).

⁶ Laine's Rebuttal, p. 3, lines 10-11.

⁷ *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Direct Testimony of Douglas Duncan Meredith on Behalf of Farmers Telephone Cooperative, Inc., p. 12, lines 230-233.

1 include continued reliance on Sprint for the provision of interconnection and the
2 commitment to not offer or support any voice or data services other than the services
3 requested pursuant to its application to amend its certification.⁸
4

5 Thus, taking literally Ms. Laine's statement that TWCIS should not "be subject to
6 any of the conditions suggested"⁹ by myself and Mr. Oliver, it is apparent that
7 TWCIS does not even intend to be held to its own commitments in this proceeding.

8 **Q: WHAT OTHER INDICATION DO YOU HAVE THAT TWCIS WILL NOT**
9 **MEET ITS COMMITMENTS?**

10 A: In Ms. Laine's rebuttal testimony she relays two seemingly contradictory intentions
11 of TWCIS. First, she states that the intent of TWCIS' application to amend its
12 certification is to offer services "in exactly the way that TWCIS is presently offering
13 services."¹⁰ But then, in the same general discussion, she indicates contrarily that
14 TWCIS "requires the flexibility . . . to change [] vendors and suppliers when it
15 deems necessary."¹¹

16 **Q: DO YOU AGREE WITH MS. LAINE'S SUGGESTION THAT THE**
17 **CONDITIONS RECOMMENDED BY YOURSELF AND MR. OLIVER ARE NOT**
18 **RAISED OR IMPLICATED BY TWCIS' PENDING APPLICATION?**

19 A: No. The recommendation that I made to the Commission was to ensure that TWCIS
20 would comply with its own commitments and with the conditions and parameters set
21 forth in the *Time Warner Declaratory Ruling*. That TWCIS should make good on
22 the statements and commitments it has made during this proceeding goes without
23 saying. But how can TWCIS, of all providers, say that the FCC's *Time Warner*

⁸ See, e.g., TWCIS Answers to Interrogatories – 1st Set, Interrogatory Nos. 1-4, 1-5(iii), 1-5(iv), 1-9, 1-9x, 1-12, 1-18.

⁹ Laine's Rebuttal, p. 3, lines 10-11.

¹⁰ Laine's Rebuttal, p. 3.

¹¹ *Id.*, p. 4.

1 *Declaratory Ruling* is not implicated in a certification proceeding involving facts
2 that are virtually identical to the facts at play in the *Time Warner Declaratory*
3 *Ruling Proceeding*, namely, the wholesale interconnection relationship between
4 Time Warner and Sprint?

5 Thus, this Commission's consideration of the recommendations that I made in my
6 Direct Testimony, are directly relevant and directly implicated by TWCIS' pending
7 application in this proceeding.

8 **Q: MS. LAINE CHARACTERIZES THE RLECS' CONCERNS REGARDING**
9 **TWCIS' CHANGING INTERCONNECTION PROVIDERS AS**
10 **"HYPOTHETICAL ISSUES THAT MAY NEVER ARISE."¹² WHAT IS YOUR**
11 **REACTION?**

12 A: I think it is interesting that Ms. Laine considers the issue of TWCIS' changing its
13 interconnection provider as a hypothetical issue. Especially now that TWCIS has
14 revealed that it requires the flexibility "to change [] vendors and suppliers,"¹³ to
15 "decide[] to change its provider of interconnection services,"¹⁴ and "to have the
16 business flexibility to obtain [] services from other entities, including from any
17 entity affiliated with TWCIS."¹⁵ Although TWCIS initially claims to make a
18 commitment to use Sprint in South Carolina, the use of a third party wholesale
19 provider is not universal across the TWCIS network and the strategy in South
20 Carolina could be changed at any moment.

21
22 Just across the border in North Carolina, a Time Warner VoIP provider is already
23 purchasing interconnection services from its affiliate - TWCIS (NC). In North
24 Carolina, TWCIS had originally sought certification for the provision of its retail
25 VoIP service. However, it subsequently notified the state commission that it would

¹² *Id.*, p. 5.

¹³ *Id.*, p. 4.

¹⁴ *Id.*, p. 5.

¹⁵ *Id.*, p. 6.

1 no longer offer its VoIP service pursuant to its certification. Shortly thereafter it
2 introduced its wholesale interconnection service. Now, the entity known as
3 "TWCIS (NC)" is the wholesale provider seeking "to enter into interconnection
4 agreements for the purpose of offering telecommunications services to Time Warner
5 Cable," the VoIP provider.¹⁶

6
7 If TWCIS wants to terminate or otherwise sever its current relationship with Sprint,
8 it should be required to come back to the Commission so that the Commission can
9 ensure that the commitments made by TWCIS through Sprint will be followed with
10 another similarly situated third party carrier. This is important because, for
11 example, Ms. Laine states that TWCIS will pay access charges because "[o]ur
12 contract with Sprint provides for payment of the appropriate access charges based on
13 the originating and terminating telephone numbers as required."¹⁷ This is the only
14 assurance that the RLECS have that TWCIS will pay appropriate access charges for
15 traffic it originates. If TWCIS is able to change its wholesale provider to another
16 entity, TWCIS will be able to avoid this commitment which is not beneficial to the
17 RLECS nor is it in the public interest.

18
19 **Q: DO THE RURAL LECS ALSO HAVE A CONCERN WITH TWCIS'**
20 **STATEMENTS REGARDING THE SERVICES IT INTENDS TO PROVIDE**
21 **ONCE IT OBTAINS ITS CERTIFICATION?**

22 **A:** Yes. In its Application and attached tariff, TWCIS requests certification for certain
23 specific services. In response to interrogatory requests, and consistent with its
24 Application, TWCIS stated that it was seeking to offer in the RLECs' service areas
25 Digital Phone interconnected VoIP services to retail residential customers, Business
26 Class Phone interconnected VoIP services to retail business customers, and "high

¹⁶ See *Time Warner Cable Information Services (North Carolina), LLC v. L. Calvin Duncan*, Affidavit of Mary Bailey (Dec. 9, 2008), p. 2.

¹⁷ *Application of TWCIS Cable Information Services (South Carolina), LLC d/b/a TWCIS Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, PUBLIC VERSION Testimony of Julie P. Laine on Behalf of TWCIS Cable Information Services (South Carolina) LLC ("Laine Testimony"), p. 8, lines 16-18 (Nov. 24, 2008).

1 capacity private line, point to point transmission/telecommunications services to
2 wholesale and retail business customers.”¹⁸ TWCIS further stated: “TWCIS will
3 not offer or support any voice or data services [other] than those described above.”¹⁹
4 However, in her Rebuttal Testimony, Ms. Laine states: “TWCIS should be allowed
5 to file amendments to its tariff – including offerings of wholesale services – to offer
6 additional services like any CLEC operating in South Carolina.”²⁰ Again, the
7 RLECs’ concern is that TWCIS sets forth a certain set of facts in order to gain
8 certification, but admits that those facts may change once certification is obtained.

9 **Q: IS TWCIS (NC) ABLE TO OBTAIN INTERCONNECTION PURSUANT TO**
10 **SECTION 251 IN NORTH CAROLINA?**

11 A: Since the TWCIS’ arbitration proceeding in North Carolina is still pending at the
12 district court, it remains to be seen whether TWCIS (NC) will be able to provide its
13 wholesale services there.

14 **Q: DOES THE *BRIGHT HOUSE* DECISION CITED BY MS. LAINE IN HER**
15 **REBUTTAL ADDRESS THE ABILITY OF AN AFFILIATED WHOLESALE**
16 **PROVIDER TO OBTAIN INTERCONNECTION UNDER SECTION 251 OF THE**
17 **TELECOMMUNICATIONS ACT?**

18 A: No. Specifically, in that case, the FCC had examined whether Verizon violated
19 section 222 of the Act because it was using competitors’ proprietary information for
20 its own customer retention purposes.²¹ Although the FCC had determined that the
21 Comcast and Bright House affiliate carriers were common carriers *for purposes of*
22 *section 222(b)*, it stressed that its holding was “limited to the specific facts and the
23 particular statutory provision at issue in that case.”²² The FCC went on to emphasize

¹⁸ See TWCIS Answers to Interrogatories – 1st Set, Interrogatory No. 1-5(i).

¹⁹ See TWCIS Answers to Interrogatories – 1st Set, Interrogatory No. 1-5(iv) (emphasis added).

²⁰ Laine Rebuttal, p. 8, lines 2-4.

²¹ See generally *Bright House Networks v. Verizon California, Inc. et al*, FCC, File No. EB-08-MD-002 (rel. June 23, 2008)(“*Bright House Decision*”).

²² *Id.* at ¶ 41.

1 that its "decision holding the [affiliate] Competitive Carriers to be
2 'telecommunications carriers' for purposes of section 222(b) does not mean that
3 they are necessarily 'telecommunications carriers' for purposes of all other
4 provisions of the Act."²³

5 **Q: DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

6 **A:** Yes.

²³ *Id.*

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Communications, and for Alternative Regulation)
_____)

**SURREBUTTAL TESTIMONY OF
H. KEITH OLIVER
ON BEHALF OF
FARMERS TELEPHONE COOPERATIVE, INC., FORT MILL TELEPHONE
COMPANY, D/B/A COMPORIUM COMMUNICATIONS, HOME TELEPHONE
COMPANY, INC., PBT TELECOM, INC. AND ROCK HILL TELEPHONE COMPANY,
D/B/A COMPORIUM COMMUNICATIONS**

1 **I. INTRODUCTION**

2

3 **Q. PLEASE STATE YOUR NAME.**

4 **A.**My name is H. Keith Oliver.

5

6 **Q. ARE YOU THE SAME MR. OLIVER THAT PROVIDED DIRECT PRE-FILED**
7 **TESTIMONY IN THIS PROCEEDING?**

8 **A.**Yes.

9

10 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

11 **A.**I am presenting testimony today on the behalf of Farmers Telephone
12 Cooperative, Inc., Fort Mill Telephone Company, d/b/a Comporium
13 Communications, Home Telephone Company, Inc., PBT Telecom, Inc. and
14 Rock Hill Telephone Company, d/b/a Comporium (collectively, the "Rural
15 LECs").

16

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 **A.**In this proceeding before the South Carolina Public Service Commission
19 ("Commission"), Time Warner Cable Information Services (South Carolina),
20 LLC ("TWCIS") has asked the Commission to expand its certificated authority to
21 provide service in the areas served by the Rural LECs. The purpose of my

1 testimony is to respond to statements made by Julie P. Laine and August H.
2 Ankum, Ph.D. in their rebuttal testimony which was given on behalf of TWCIS.¹

3
4 **II. RESPONSE TO ASSERTIONS MADE BY MS. LAINE**
5 **CONCERNING TWCIS' PAYMENT INTO THE STATE**
6 **UNIVERSAL SERVICE FUND**

7
8 **Q. PLEASE RESPOND TO MS. LAINE'S EXPRESSION OF CONFUSION THAT**
9 **A REQUIREMENT FOR TWCIS TO PAY INTO THE STATE UNIVERSAL**
10 **SERVICE FUND ("USF") IN THE SAME MANNER AS THE RURAL LECS "IS**
11 **CURIOUS" BECAUSE THE RURAL LECS DO NOT DISCLOSE HOW THEY**
12 **TREAT BUNDLED OFFERINGS IN THE CONTEXT OF MAKING PAYMENTS**
13 **INTO THE FUND.²**

14 **A.** In my testimony, I stated that as a condition to certification, TWCIS should be
15 required to make payments into the state USF based on the full voice portion of
16 their service offering and that, where this service is bundled, TWCIS should be
17 required to calculate the voice revenues in the same manner as the Rural

¹ See generally *Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Rebuttal Testimony of Julie P. Laine on Behalf of Time Warner Cable Information Services (South Carolina) LLC (Dec. 15, 2008) ("Laine's Rebuttal"); *Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation*, Rebuttal Testimony of August H. Ankum, Ph.D on Behalf of Time Warner Cable Information Services (South Carolina) LLC (Dec. 15, 2008) (Ankum's Rebuttal").

² Laine's Rebuttal, pp. 11-12.

1 LECs. Ms. Laine's expression of confusion further illustrates the need for such
2 a requirement.

3 The Rural LECs offer a stand alone basic local voice offering in addition
4 to making the offering available along with other services in a bundled offering.
5 Accordingly, regardless of whether the offering is made available on a stand
6 alone or a bundled offering basis, the Rural LECs allocate the revenues
7 generated by the full voice portion of the service offering when calculating the
8 amount that should be paid into the state USF.

9 In her rebuttal testimony, Ms. Laine states only that TWCIS pays into the
10 state USF "based upon its interstate and intrastate revenues." No indication is
11 provided as to whether TWCIS is even aware of its obligation to ensure that the
12 payments made into the state USF are based on the full voice portion of its
13 service offering, or how to ensure that this determination is being made in the
14 context of TWCIS' multiple bundled offerings. Tremendous time and resources
15 have been spent by the state of South Carolina and this Commission to
16 develop a state USF that is truly one of the best in the nation. In order to
17 ensure the fund's viability, all payers into the fund, Rural LECs and TWCIS
18 alike, must make payments into the state USF based on the full voice portion of
19 their service offerings whether the offerings are available on a stand alone or
20 bundled basis.

1 **III. RESPONSE TO DR. ANKUM'S ATTEMPT TO REFUTE**
2 **ASSERTIONS THAT TWCIS WILL SERVE THE LEAST COSTLY-**
3 **TO-SERVE AND THE MOST PROFITABLE CUSTOMERS IN THE**
4 **RURAL LECS' SERVICE AREAS.**

5
6 **Q. PLEASE DESCRIBE THE FLAW IN DR. ANKUM'S ARGUMENT.**

7 **A.** TWCIS together with its parent company, Time Warner Cable, collectively are
8 the incumbent cable provider in many areas within the Rural LECs' telephone
9 service areas. TWCIS has served the least costly-to-serve areas and areas
10 that are the most profitable to serve while not having to provide service in the
11 higher cost areas. I then stated that even if TWCIS obtains grant of its
12 application and receives certification to provide voice services in the Rural LEC
13 areas, this fact will not change. This differs significantly from the Rural LECs
14 who because of their carrier-of-last-resort ("COLR") obligations, must serve all
15 customers within their service area. Because of the fact that TWCIS has
16 chosen to serve the least costly and most profitable areas, I urged this
17 Commission to ensure that a truly level playing field is created and that
18 customers in the most rural areas where TWCIS chooses not to serve are not
19 harmed.

20 In his rebuttal testimony, Dr. Ankum provides no evidence to contradict
21 these facts and instead admits that TWCIS will be serving customers where it

1 has existing cable facilities.³ He then seeks to place this fact in the context
2 that service in these areas is *"irrespective of whether those customers are low*
3 *cost or high cost customers for the Companies."*⁴ In a further attempt to
4 minimize the harm that would ensue by serving only the least costly and most
5 profitable customers, Dr. Ankum enters into a lengthy discussion in which he
6 makes general observations regarding the way "carriers" and "competitors"
7 provide service within their respective areas.⁵

8 Throughout his discussion, however, Dr. Ankum fails to recognize that in
9 the matter before the Commission, there are not two similarly situated
10 "competitors." Instead, there are the Rural LECs that have specific COLR
11 obligations for the entire areas in which they serve, including the most sparsely
12 populated, and thus highest cost areas to serve, and TWCIS, an incumbent
13 cable operator that has chosen to build its facilities in certain communities
14 within the Rural LEC service territories that TWCIS is able to serve "profitably."⁶

15
16 **Q. PLEASE EXPLAIN THIS COLR OBLIGATION AND DESCRIBE HOW THIS**
17 **DIFFERENTIATES THE RURAL LECS FROM TWCIS.**

18 **A.** As the Commission is aware, prior to the Telecommunications Act of 1996
19 ("1996 Act"), each LEC possessed a monopoly franchise within its
20 geographically defined service area.⁷ In exchange for that monopoly franchise,

³ Ankum's Rebuttal, p. 3.

⁴ *Id.* (emphasis in original).

⁵ See Ankum Rebuttal, pp. 4-7. While Dr. Ankum's general observations may be true regarding similarly situated "competitors," as explained herein, this is not true of all "carriers."

⁶ See Ankum Rebuttal, pp. 6-7 ("all competitors seek to serve customers that they can serve profitably. . . . TWCIS will undoubtedly seek to serve customers that are profitable for TWCIS").

⁷ See *Verizon Communications, Inc. v. Law Offices of Curtis v. Trinko, LLP*, 124 S.Ct. 872 (2004).

1 the LEC accepted responsibility to serve all qualified customers within that
2 territory.⁸ After the passage of the 1996 Act, most of these franchised
3 telephone companies, which the 1996 Act defined as "incumbent LECs,"⁹ were
4 still expected to provide service to all customers in the service area, "whether
5 or not it is economically beneficial to do so."¹⁰ This obligation for incumbent
6 LECs to serve all qualified customers within their territories is known as the
7 incumbent LEC's COLR obligation.

8 With this COLR obligation, Rural LECs must serve all customers in their
9 service areas, "whether or not it is economically beneficial to do so." Dr.
10 Ankum's general observations regarding the nature of "competitors" clearly do
11 not apply in this context.

12 Further, this obligation to serve all customers includes customers that
13 reside in less densely populated areas within the Rural LECs' service areas
14 where it is well known that it is more costly to serve.¹¹ This differs significantly
15 from TWCIS which, as stated by Dr. Ankum, provides service only where it has
16 existing cable facilities and where it can serve customers profitably.¹² For
17 example, TWCIS' parent company, Time Warner Cable, serves Whitesville, one
18 of the more populated communities in Home Telephone Company's service
19 area. Time Warner Cable, however, does not serve Oakley, a less populated

⁸ See "Telecommunications and Rural Development: Threats and Opportunities," Edwin B. Parker, TVA Rural Studies, May 1996, Appendix A.

⁹ See 47 U.S.C. § 251(h).

¹⁰ *Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling and Injunctive Relief: Memorandum Opinion and Order*, 11 FCC Rcd 13082, ftn 24 (1996).

¹¹ See generally, "Improving Rural Telecommunications Infrastructure," Bruce L. Egan, Special Consultant and Affiliated Research Fellow, Columbia Institute for Tele-Information, Columbia University, Paper Prepared for TVA Rural Studies, May 1996, Section 4, Rural Telephone Plant Characteristics and Costs.

¹² Ankum Rebuttal, pp. 5-7.

1 community which is less than five miles from Whitesville. This pattern of Time
2 Warner Cable serving the more populated areas and not the less populated
3 areas can be found within Home Telephone Company's service area
4 boundaries and within the boundaries of the service areas of the other Rural
5 LECs.¹³

6
7 **IV. RESPONSE TO DR. ANKUM'S ASSERTION THAT THE**
8 **RECOMMENDATIONS MADE BY THE RURAL LECS IMPEDE**
9 **THE PUBLIC INTEREST.**

10
11 **Q. PLEASE RESPOND TO DR. ANKUM'S STATEMENT THAT "REGULATIONS**
12 **REFLECT THE COMPANY'S STATUS AS INCUMBENT CARRIERS AND**
13 **SERVE TO PROTECT THE RATEPAYERS *IN THE ABSENCE OF***
14 ***COMPETITION.*"¹⁴**

15 **A.** As stated in my testimony, the Digital Phone service that TWCIS seeks to
16 provide is almost indistinguishable from the telecommunications services
17 provided by the Rural LECs. Thus, in the context of this proceeding, the
18 Commission is deciding whether and how to allow TWCIS to provide
19 competitive voice services in areas in which its competitors are regulated Rural
20 LECs. To ensure that a level playing field exists between the competitors, the
21 Rural LECs have proposed certain reasonable regulations and have justified

¹³ It has also been observed that in some instances, Time Warner Cable chooses to serve new developments where costs are typically lower than installing its facilities in more established communities.

¹⁴ Ankum Rebuttal, p. 15 (emphasis in the original).

1 the purpose of each in this proceeding. By ensuring that TWCIS abides by
2 these regulations, which are no more burdensome than those governing the
3 telecommunications services provided by the Rural LECs, the Commission
4 would not only provide a level playing field but would also ensure that the entry
5 of another voice provider in the rural markets would not adversely impact the
6 availability of affordable local exchange service.

7
8 **Q. WOULD THE REGULATIONS IMPEDE PUBLIC INTEREST AS CLAIMED BY**
9 **DR. ANKUM?**

10 **A.** Not at all. Essentially, the Commission would step into the same role as
11 protector for the consumer for voice services offered by TWCIS as they do
12 today for traditional LEC providers. Accordingly, the reasonable regulations
13 would greatly advance rather than impede the public interest.

14 Additionally, the Commission has the authority to accept or reject the
15 certification application based on public interest considerations. Thus, in effect
16 the public interest requires that certain concessions from applicants be made in
17 order for a certificate to be approved. For example, in the case before the
18 Commission, TWCIS and its parent company, Time Warner Cable, collectively
19 have a significant competitive advantage over the Rural LECs in the provision
20 of video services due to the fact that TWCIS/Time Warner Cable is a vertically
21 integrated video and programming provider. To provide for a more uniform
22 competitive arena, as a part of seeking grant of its application, TWCIS could
23 provide the Commission with a good faith agreement that it will make the same

1 programming provided by its affiliates accessible to the Rural LECs on the
2 same terms, prices and conditions in which it obtains the programming.

3

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A.** Yes it does.

Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C,
2008-328-C, and 2008-329-C

IN RE: Application of Time Warner Cable Information Services (South Carolina), LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Rock Hill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation (Docket No. 2008-329-C)

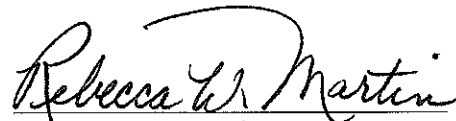
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I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the Surrebuttal Testimony of Douglas Duncan Meredith and one (1) copy of the Surrebuttal Testimony of H. Keith Oliver in the above-referenced dockets upon the following counsel of record by causing said copies to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as follows.

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